



**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

TECHNICAL ANALYSIS

**Administrative Civil Liability Complaint
No. R9-2010-0082
Oscar Molina Pereyra
Linda Michelle Pereyra
Bulldog Concrete Pumping**

**Noncompliance with
Cleanup and Abatement Order
No. R9-2008-0036**

September 22, 2010

**by
Frank Melbourn
Water Resource Control Engineer
Compliance Assurance Unit**

A. INTRODUCTION

This technical analysis provides a summary of factual and analytical evidence supporting administrative assessment of civil liability in the amount of \$329,091 against Oscar Molina Pereyra and Linda Michelle Pereyra, individually and d.b.a. Bulldog Concrete Pumping (collectively referred to as "Dischargers") pursuant to Water Code section 13350 for violation of California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) Cleanup and Abatement Order No. R9-2008-0036, (CAO, See **Exhibit 1**) as alleged in Administrative Civil Liability Complaint No. R9-2010-0082 (Complaint).

B. ALLEGATION: DISCHARGERS FAILED TO CLEANUP AND ABATE EXISTING AND THREATENED POLLUTION

The violation alleged against the Dischargers is the basis for assessing administrative civil liability pursuant to Water Code section 13350. The Dischargers violated CAO Directive No. 2 on January 8, 2009, when they failed to cleanup and abate existing and threatened pollution associated with the unauthorized discharge of waste into Chollas Creek. The violation continues; therefore the days of violation are 622 (January 8, 2009 to September 22, 2010) and counting.

Furthermore, the Dischargers illegally discharged concrete into Chollas Creek and they also failed to submit reports required under the CAO. San Diego Water Board Prosecution staff is not recommending that liability be assessed for the concrete discharges and the reporting violations because the top priority is removal of the discharged concrete and the restoration of Chollas Creek. While penalties may be available for the discharge and reporting violations, Prosecution staff find that the City of San Diego's criminal prosecution of Mr. Pereyra for the concrete discharges and the penalties sought in this complaint for the failure to cleanup and restore the creek to be sufficient to address these violations, deter similar conduct in the future, and promote the overlapping regulatory schemes of the enforcing agencies.

C. DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY

Pursuant to Water Code section 13350,

"Any person who (1) violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or state board,...shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e)."

Furthermore, Water Code section 13350 (e) provides that

“The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.

(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.”

Water Code section 13327 requires the San Diego Water Board to consider several factors when determining the amount of civil liability to impose. These factors include: “...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require.”

The State Water Resources Control Board Water Quality Enforcement Policy¹ (Enforcement Policy), Section VI, provides a penalty calculation methodology for water boards to use in administrative civil liability cases. The penalty calculation methodology enables the water boards to fairly and consistently implement liability provisions of the Water Code for maximum enforcement impact to address, correct, and deter water quality violations. The penalty calculation methodology provides a consistent approach and analysis of factors to determine liability based on the applicable Water Code section.

Although the CAO was issued in response to a discharge, the violation in the Complaint and this technical analysis is a “non-discharge violation” when applying Water Code section 13350(e)(1) and the Policy’s penalty calculation methodology. Therefore the first two steps of the penalty calculation dealing with “discharge violations” do not apply to this analysis.

¹ Dated November 17, 2009.

1. Step 1: Potential for Harm for Discharge Violations

Not applicable because no discharge violations are alleged in this technical analysis.

2. Step 2: Assessments for Discharge Violations

Not applicable because no discharge violations are alleged in this technical analysis.

3. Step 3: Per Day Assessments for Non-Discharge Violations

Pursuant to the Enforcement Policy, water boards shall calculate an initial liability factor for each non-discharge violation. The calculation shall consider the violation's potential for harm and the extent of the violation's deviation from applicable requirements.

The "Potential for Harm" and "Deviation from Requirement" elements are determined to be "Major." Using these values in "Table 3 – Per Day Factor" from the Enforcement Policy results in a "Per Day Factor" of 1.

In 2004, the Dischargers began renting a dirt lot at the corner of Logan Avenue and South Gregory Street within the City of San Diego. Figure 1 displays the lot/discharge location on a street map.

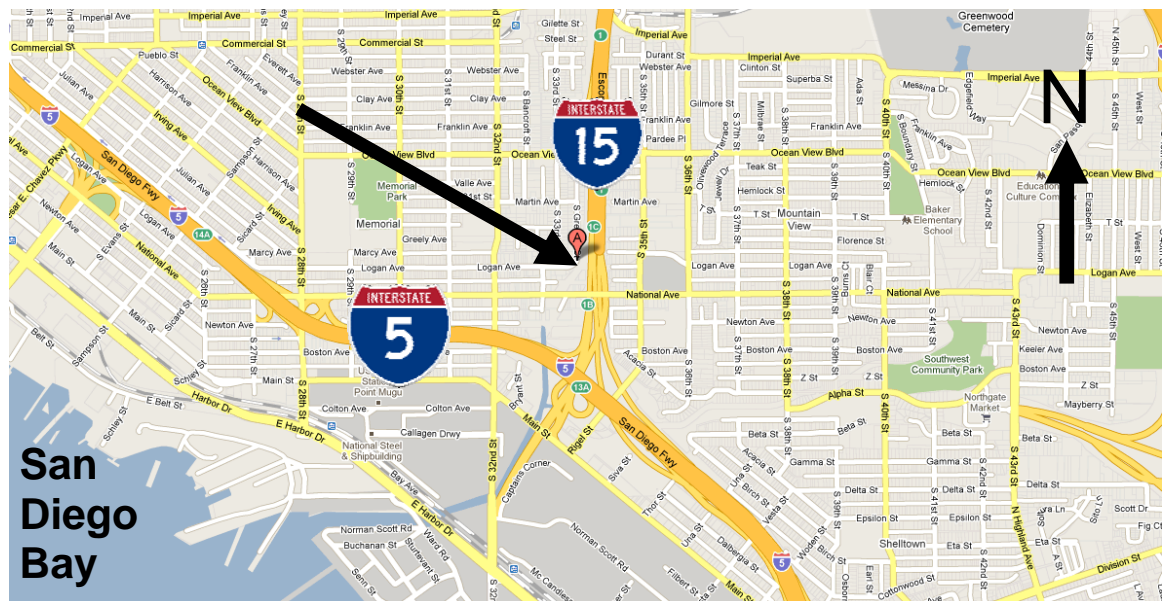


Figure 1. Site Location Map. Location of rented lot and concrete discharge into Chollas Creek.

Figure 2 is a photograph of the lot used to store work vehicles and construction materials. The lot was also used as a place to pour leftover concrete on the ground to dry and breakup for disposal.



Figure 2. Photograph of lot. The lot is adjacent to the discharge location. Photograph taken looking to the southwest. Photograph recorded as computer file IMGP0138.JPG taken by the San Diego Water Board on August 28, 2006.

A fact of particular significance is that Chollas Creek flows to the south along the eastern edge of the chain link fenced lot and ultimately discharges into San Diego Bay about a mile away. Chollas Creek is in the Chollas Hydrologic Subarea (908.22) and has the following designated beneficial uses as described in the Water Quality Control Plan for the San Diego Basin (9), California Regional Water Quality Control Board (Basin Plan):

- Contact Water Recreation (REC-1)
- Non-contact Water Recreation (REC-2)
- Warm Freshwater Habitat (WARM)
- Wildlife Habitat (WILD)

During 2004 and 2005, Dischargers discharged uncured concrete into Chollas Creek on at least nine separate occasions. On March 30, 2005, the City of San Diego received an anonymous complaint that a concrete mixer truck was discharging concrete into Chollas Creek from the lot. Corky Patterson, a City of San Diego Code Compliance Inspector received the complaint and investigated. Mrs. Patterson went to the lot and observed Jose Espersa, a Bulldog Concrete Pumping employee, washing out a concrete mixer truck. Furthermore, she observed that four feet of the six foot chain link fence was covered with fresh concrete that flowed from the fence eastward down the slope and into Chollas Creek. Figures 3 and 4 depict the concrete discharged into Chollas Creek. Mrs. Patterson notified the California Office of Emergency Services of the discharge (Control No. OES 05-1964), who then notified the California Department of Fish and Game (DFG).



Figure 3. Photograph of Chollas Creek. Photograph taken looking to the north. Photograph recorded as computer file IMG0138.JPG was taken by the San Diego Water Board on August 28, 2006.



Figure 4. Photograph of Chollas Creek. Photograph taken looking to the west. The lot in Figure 2 can be seen in the top of the photograph. Photograph recorded as computer file IMG_2342.jpg was taken by the San Diego Water Board on April 20, 2010.

DFG investigators responded to the call and inspected the site. DFG calculated that 1,250 square feet of Chollas Creek was impacted and that 3,000 square feet of creek bank was impacted. DFG concluded that the impacts resulted in a 100 percent loss of habitat through smothering. Dischargers' multiple discharges of uncured concrete to Chollas Creek entombed affected portions of the creek bed, thus completely eliminating the beneficial uses.

At the time of the discharge, the concrete was highly toxic to the creek's aquatic wildlife. The most toxic component of concrete is lime (CaO). The DFG reported on the environmental impact of discharging uncured concrete into Chollas Creek. Page 6 of the July 2005 DFG report states the following:

“The toxic effect of lime is due solely to the rapid change in pH. The toxicity cannot be readily mitigated by dilution as the addition of water merely causes more of the lime to dissolve, thus creating a greater volume of toxic, high pH material to remove or remediate....In general, fish and other gill-breathing organisms subjected to high pH suffer: 1) extreme respiratory dysfunction from either direct chemical erosion (similar to burning) of sensitive gill tissue and/or impairment of gas exchange at the gill surface; 2) irreversible chemical burns of optic and olfactory tissues; 3) loss of equilibrium due to respiratory distress and evacuation of the gas bladder, and 4) ultimately death (McKee and Wolf, 1971). The higher the pH, the more rapidly this occurs.”

A water sample taken on March 30, 2005, immediately downstream from where the concrete entered into the creek was analyzed for pH by the City. The test result was a pH of 12.2. The Basin Plan's Water Quality Objective for pH states that the “pH value shall not be changed at any time more than 0.2 pH units from that which occurs naturally.” The Basin Plan further states that pH ranges of 6.5 to 9.0 are considered harmless. Control samples collected above the spill site were measured at a pH of 8.14. One week later, a pH sample still showed toxicity with a pH value of 12.1 on April 6, 2005. It is not known exactly when the water returned to a normal pH range (6.5 to 9.0), but it is likely that it did so within a month of the discharge. Lime becomes less bioavailable as concrete hardens. Once the concrete hardens it is no longer causing toxicity because the lime is no longer bioavailable.

On November 20, 2006, the San Diego City Attorney's Office obtained a criminal plea agreement from Oscar Molina Pereyra. The agreement resulted in Mr. Pereyra pleading guilty to three counts of violating Fish and Game Code section 5650(a)(4) [unlawful deposit of lime into waters of the state]; being placed on three years probation; paying a \$6,795 fine; mailing 100 notices of proper concrete disposal to concrete contractors; performing 50 hours of community service; and complying with the reasonable requests of the involved agencies regarding removal of the discharged concrete. The involved agencies include the San Diego Water Board, the State Water Resources Control Board, U.S. Army Corps of Engineers, California Department of Fish and Game, and the City of San Diego Storm Water Pollution Prevention Program. On March 7, 2008, the San Diego City Attorney's Office notified the San Diego Water Board that Mr. Pereyra paid his fine, completed the community service hours, and mailed the notices.

On August 21, 2008, the San Diego Water Board issued the CAO because the concrete had not been removed. After failing to receive any of the reports required pursuant to the CAO, the San Diego Water Board inspected the

discharge site on April 20, 2010, and June 25, 2010. The inspections revealed that the concrete remains where it was discharged, and that no cleanup or restoration work has been done. Therefore the violation is ongoing.

Initial Liability

A "Per Day Factor" of 1.0 was obtained from Table 3 of the Enforcement Policy based upon findings of "Major" for both "Potential for Harm" and "Deviation from Requirement" as described in detail above. Therefore, the Initial Liability is;

$$(\$5,000 \text{ per day}) \times (1.0) = \$5,000 \text{ per day of violation.}$$

4. Step 4: Adjustment Factors

The Enforcement Policy describes three factors related to the violator's conduct that should be considered for modification of the amount of initial liability: (1) the violator's culpability, (2) the violator's efforts to cleanup or cooperate with regulatory authorities after the violation and (3) the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

The Enforcement Policy further provides that additional adjustments can be applied in cases of multiple violations resulting from the same incident or multiple days of violation. For violations lasting more than 30 days, the San Diego Water Board may adjust the per-day basis for civil liability if one of the following findings is made and provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation.

- (1) The violation is not causing daily detrimental impacts to the environment or the regulatory program;
- (2) The violation results in no economic benefit from the illegal conduct that can be measured on a daily basis; or,
- (3) The violation occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation.

a. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a culpability multiplier of 1.5 was selected as detailed below.

The concrete is in Chollas Creek because the Dischargers on several occasions discharged concrete into the creek. The San Diego Water Board issued the Dischargers a Cleanup and Abatement Order to remove the concrete and restore the creek. The Dischargers have not complied with any of the cleanup and abatement order directives, nor have they supplied any documentation as to why they have not complied with the order. On April 29, 2010, Mr. Pereyra verbally acknowledged to San Diego Water Board staff that he was required to develop and implement a cleanup and restoration plan to remove the concrete from Chollas Creek, and that he had not taken any steps to do so. Furthermore, a condition of Mr. Pereyra's criminal plea agreement required him to "comply with all reasonable requests of the involved agencies regarding removal of concrete." Therefore the evidence indicates that the Dischargers have intentionally violated the terms of the order; or at least have negligently failed to comply with the CAO.

b. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation. In this case a Cleanup and Cooperation multiplier of 1.5 was selected as detailed below.

The Dischargers have not cleaned up the discharge and have not cooperated with the San Diego Water Board. The concrete discharged into Chollas Creek can be cleaned up. There are multiple access points, and the majority of the discharge has remained intact with some smaller pieces downstream. The CAO contained requirements to develop, submit, and implement a restoration plan to return the creek to pre-discharge conditions. The requirements included obtaining professional assistance to develop the plan and obtaining environmental permits to conduct the work in the creek. Proper planning will minimize the environmental impact caused during cleanup. The Dischargers did not initiate creek restoration, and they did not submit the required plans and reports. Although the Dischargers acknowledge the CAO requirements, they have not complied with them. Furthermore, on July 26, 2010, the San Diego Water Board through a certified return receipt letter invited the Dischargers to meet and discuss ways to resolve the Dischargers' failure to comply with the CAO, however after the Dischargers received the letter the San Diego Water Board has not received any correspondence.

c. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. In this case, a multiplier of 1.1 was selected for the failure to cleanup the concrete

due to a similar violation documented by the City of San Diego and detailed below.

This is the second time that Bulldog Concrete Pumping was found to discharge concrete, and failed to cleanup the discharge. On December 20, 2004, the City of San Diego issued a Notice of Violation (NOV, Exhibit 2) to Bulldog Concrete Pumping for discharging concrete waste to a street gutter on Webster Avenue in the City of San Diego. On December 29, 2004, a second NOV (Exhibit 3) was issued to Bulldog Concrete Pumping for failing to cleanup the concrete waste discharged into the gutter and storm drain inlet at the Webster Avenue site.

d. Adjustment for Multiple Day Violations

Upon review of the findings necessary to invoke the Enforcement Policy's Multiple Day Violations reduction (See first paragraph of Step 4.), the second finding can be made for the alleged violation and therefore, an adjustment can be made to reduce the days of violation for the purpose of calculating liability.² The finding on point states that the alleged violation "[r]esults in no economic benefit from the illegal conduct that can be measured on a daily basis." In this case, the Dischargers saved money by not properly disposing of the concrete, thus gaining an economic advantage over competitors that comply because the Dischargers can use the money they save for other revenue producing activities. The money saved on the date of noncompliance can be compounded to reflect its current day worth. However the Dischargers are not daily benefiting from the existence of the concrete in the creek. Therefore, Finding No. 2 can be made. An example where the finding could not be made would be if the Dischargers were able to store equipment on the concrete slab created by the discharged concrete and they were thus able to avoid paying for the storage of the equipment at another location.

Figure 5 displays the Adjusted Days of Violation pursuant to the Enforcement Policy.

² Page 18 of the Enforcement Policy states "In these cases [Multiple Day Violations], the liability shall not be less than an amount that is calculated based on an assessment of the initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five day period of violation until the 30th day, plus an assessment for each thirty (30) days of violation."

Alleged Violation	Days of Violation	Adjusted Days of Violation
Failure to Cleanup and Abate Existing & Threatened Pollution	620	26

Figure 5. Adjusted Days of Violation

5. Step 5: Determination of Total Base Liability Amount

The Total Base Liability amount is determined by adding the initial liability amounts for each violation in Steps 1 through 3, and applying the adjustment factors in Step 4 [(Initial Liability \$5,000) x (Culpability 1.5) x (Cleanup & Cooperation 1.5) x (History 1.1) x (26 days) = \$321,750]. Accordingly, the Total Base Liability amount for the violations is calculated to be \$321,750. See **Exhibit 4**, ACL Methodology Table, for further details of the ACL calculation.

6. Step 6: Ability to Pay and Ability to Continue Business

The Total Base Liability Amount may be adjusted to address the violator's ability to pay or continue in business. To do so, however, the San Diego Water Board must have sufficient financial information necessary to assess the violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator's ability to continue in business.

On April 29, 2010, the San Diego Water Board Prosecution Team contacted Mr. Pereyra on his cell phone. Mr. Pereyra stated that he continues to operate as a concrete contractor doing business as Bulldog Concrete Pumping.³ Mr. Pereyra claimed that his home was foreclosed; that it was a long time since he had been contracted to provide concrete; and that he didn't have the money to cleanup the concrete in Chollas Creek. A search of the County of San Diego Recorder's files shows that Mr. and Mrs. Pereyra sold their home at 249 S. 33rd Street, San Diego, California, in September 2009. The Pereyras purchased a home at 9089 Avocado Street, Spring Valley, California in February 2010 valued at \$220,000. The Pereyras also own an unimproved residential lot in Bonita valued at \$306,000.

Currently, the Dischargers do not appear to have the financial ability to pay the entirety of the proposed penalty. Additional information, however, is necessary to determine their inability to pay some portion of the penalty or to cleanup Chollas Creek in accordance with the CAO. The failure to comply with the CAO

³ The County of San Diego Fictitious Business License for Bulldog Concrete expired on May 25, 2010.

gives rise to the violations at issue. The Dischargers should submit information regarding their assets and their ability to stay in business. Until the Dischargers provide such information, no reduction to the Base Liability Amount is recommended at this time.

7. Step 7: Other Factors As Justice May Require

The Enforcement Policy provides that if the San Diego Water Board believes that the amount determined using the above factors is inappropriate, the liability amount may be adjusted under the provision for "other factors as justice may require," if express finding are made. Examples of circumstances warranting an adjustment under this step are:

- (1) The discharger has provided, or Water Board staff has identified, other pertinent information not previously considered that indicates a higher or lower amount is justified.
- (2) A consideration of issues of environmental justice indicates that the amount would have a disproportionate impact on a particular disadvantaged group.
- (3) The calculated amount is entirely disproportionate to assessments for similar conduct made in the recent past using the Enforcement Policy.

The circumstances in this matter do not warrant an adjustment under this step.

The Enforcement Policy also provides under the "Other Factors as Justice May Require" that the cost of investigation and enforcement should be added to the liability amount. Over the course of trying to resolve this matter with the Dischargers, the San Diego Water Board invested 47 hours to investigate, prepare enforcement documents, and consider this action. The total investment of the San Diego Water Board to date is \$7,341. Therefore when the staff costs are added to the Total Base Liability Amount of \$321,750 results in an amount of \$329,091.

8. Step 8: Economic Benefit

The Enforcement Policy directs the San Diego Water Board to determine any economic benefit of the violations based on the best available information and suggests that the amount of the administrative civil liability should exceed this amount whether or not economic benefit is a statutory minimum.

The Dischargers enjoyed an economic benefit by failing to remove the concrete. There were cost savings in plan development, labor, transportation, and disposal. The total economic savings enjoyed by Bulldog Concrete Pumping is estimated

to be \$58,470. The San Diego Water Board Prosecution Team calculated that the Dischargers enjoyed an economic benefit of \$55,143 for failing to remove the concrete and restore the creek; and \$3,327 by failing to develop a Creek Restoration and Monitoring Plan.

The recommended liability is greater than the Dischargers' calculated economic benefit from the alleged violation.

9. Step 9: Maximum and Minimum Liability Amounts

Pursuant to Water Code section 13350(e)(1)(B), the minimum civil liability that the San Diego Water Board must assess is not less than "one hundred dollars (\$100) for each day in which the violation occurs." Pursuant to Water Code section 13350(e)(1) the maximum civil liability that the San Diego Water Board may assess is five thousand dollars (\$5,000) per day of violation (per violation). Figure 7 displays the Minimum and Maximum liability that the San Diego Water Board must assess in this case if the allegations are found to be true.

Alleged Violation	Days of Violation	Minimum Civil Liability	Maximum Civil Liability
Failure to Cleanup and Abate Existing & Threatened Pollution	622	\$62,200	\$3.1 million

Figure 7. Minimum and Maximum Civil Liability

10. Step 10: Final Liability Amount

The recommended liability amount is greater than the statutory minimum and less than the statutory maximum for the violation. Therefore the recommended liability, \$329,091 is within the statutory constraints.

Exhibit List
Technical Analysis
for
ACL Complaint R9-2010-0082

1. Cleanup and Abatement Order No. R9-2008-0036 including transmittal letter.
2. City of San Diego, Storm Water Pollution Prevention Program, Notice of Violation No. SW4896.
3. City of San Diego, Storm Water Pollution Prevention Program, Notice of Violation No. SW4864
4. Penalty Methodology Decisions spreadsheet for ACL Complaint No. R9-2010-0082



California Regional Water Quality Control Board San Diego Region



Linda Adams
Secretary for
Environmental
Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
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[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

Exhibit 1

Certified Mail No. 7007 1490 0003 8753 5209
(return receipt requested)

August 21, 2008

In reply, refer to:

Regulatory Measure Number 350883:carias

Bulldog Concrete Pumping
Mr. and Mrs. Oscar Molina Pereyra
249 South 33RD Street
San Diego, California 92113

CIWQS	
Party No.	458970
Party No.	458975
Place No.	713170
Reg. M. No.	350883
Inspection I.D. No.	1318152

**SUBJECT: CLEANUP AND ABATEMENT ORDER NO. R9-2008-0036 FOR
BULLDOG CONCRETE PUMPING**

Dear Mr. and Mrs. Pereyra:

Enclosed is Cleanup and Abatement Order (CAO) No. R9-2008-0036 issued by the California Regional Water Quality Control Board, San Diego Region (Regional Board) concerning unauthorized discharges of concrete slurry into Chollas Creek from a vacant lot located on the 3300 block of Logan Avenue and Gregory Street in the City of San Diego (Chollas Creek Hydrologic Unit).

The CAO is issued pursuant to Water Code section 13304 and directs you to cleanup the concrete and abate the pollution associated with the unauthorized discharge. Please note the deadlines contained within the CAO.

This Order is self-explanatory and effective immediately. Any person affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with section 13320 of the California Water Code and Section 2050 of Title 23, California Code of Regulations. The State Board must receive the petition within 30 days of the date of the enclosed Order.

Any person affected by this action of the Regional Board may also request an evidentiary hearing before the Regional Board. To schedule a hearing at a Regional Board meeting, you must submit a written request to this office within 30 days of the issuance of the CAO. Be aware that a request for a hearing does not stay any of the deadlines in the CAO.

August 21, 2008

Reimbursement of Regional Board Oversight Costs

As indicated in the directives of the Order and pursuant to Water Code section 13304, the Regional Board is entitled to reimbursement for all reasonable costs actually incurred to investigate unauthorized discharges of waste and to oversee cleanup of such waste, or other remedial action required by this Order. Please be aware that you will receive invoices for costs incurred by the Regional Board in investigating this unauthorized discharge of waste and overseeing implementation of the requirements of this order. Subsequently, the Regional Board will send periodic invoices for additional staff expenditures overseeing cleanup and abatement associated with the Order.

Written correspondence pertaining to this CAO should be directed to the following address:

Michael P. McCann, Assistant Executive Officer
Attn: Southern Watershed Unit
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

I strongly urge a prompt and complete response to each directive in the CAO. Please contact Christina Arias at (858) 627-3931 or carias@waterboards.ca.gov if you have any questions regarding this matter.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Respectfully,



MICHAEL P. MCCANN
Assistant Executive Officer

Enclosure: Cleanup and Abatement Order No. R9-2008-0036.

cc:

Mr. Terry Dean
U.S. Army Corps of Engineers
Regulatory Division
South Coast Branch, San Diego Section
6010 Hidden Valley Road, Suite 105
Carlsbad, California 92011

Ms. Kelly Fisher
California Department of Fish and Game
South Coast Region
Habitat Conservation Planning – South
4949 Viewridge Avenue
San Diego, CA 92123

Ms. Ruth Kolb
City of San Diego
Stormwater Pollution Prevention Program
1970 B Street, MS 27A
San Diego, CA 92102

Mr. David Karlin
Head Deputy City Attorney
Office of the City Attorney
Criminal Division
Consumer and Environmental Protection Unit
1200 3rd Avenue, Suite 700
San Diego, CA 92101-4103

Mr. Ken Greenberg
USEPA
Water Division (WTR-7)
75 Hawthorne Street
San Francisco, CA 94105

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

CLEANUP AND ABATEMENT ORDER NO. R9-2008-0036

FOR

**BULLDOG CONCRETE PUMPING
OSCAR MOLINA PEREYRA
LINDA MICHELLE PEREYRA
249 SOUTH 33RD STREET
SAN DIEGO, CALIFORNIA 92113**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds that:

1. Bulldog Concrete Pumping is a concrete paving company operating in San Diego, California. Bulldog Concrete Pumping is owned and operated by Oscar Molina Pereyra and Linda Michelle Pereyra (hereinafter, Dischargers).
2. Bulldog Concrete Pumping is responsible for the un-permitted discharge of concrete slurry (water and concrete material) on numerous occasions to Chollas Creek between 2004 and 2005. The discharges occurred via overflow from a vacant lot adjacent to the 3300 block of Logan Avenue and Gregory Street.
3. During 2004 and 2005, the Dischargers rented the vacant lot from Mr. Lonnie Pleasant located at the 3300 block of Logan Avenue and Gregory Street. Drainage from the lot is discharged directly to Chollas Creek, about 1 mile upstream of the creek mouth where it joins San Diego Bay.
4. Chollas Creek is approximately 30 miles long, and drains a watershed of approximately 16,273 acres. Designated existing beneficial uses of inland surface waters in Chollas Creek in the Water Quality Control Plan for the San Diego Basin (Basin Plan) include Non-contact Water Recreation (REC 2), Warm Freshwater Habitat (WARM), and Wildlife Habitat (WILD). Contact Water Recreation (REC 1) is identified as a potential beneficial use.
5. The Chollas Creek watercourse is defined as a water of the State as defined by section 13050(e) of the California Water Code (WC).
6. Pursuant to WC section 13260, "any person discharging waste or proposing to discharge waste, within any region that could affect the quality of the waters of the state..." shall file a report of waste discharge.
7. On numerous occasions before April 6, 2005, the Dischargers caused and/or permitted the discharge of concrete slurry waste from the vacant lot directly into

Chollas Creek. The Regional Board has not received an application/report of waste discharge for wastes discharged at the site and therefore, the discharge was without Waste Discharge Requirements, in violation of Water Code sections 13243¹ and 13260².

8. On April 6, 2005, the California Department of Fish and Game measured a pH of 12.2 in Chollas Creek downstream of the discharge point. A pH of 6.5 to 8.5 is optimal for most aquatic organisms, and a pH of 11.0 or higher is considered lethal to all species of fish. Concrete and concrete slurry wastes are likely to have high pH values.
9. On November 12, 2006, Mr. Pereyra individually and d.b.a. Bulldog Concrete Pumping pled guilty to three counts of violating Fish & Game Code section 5650(a) (unlawful deposit of lime into waters of the state) for discharging the concrete slurry to Chollas Creek pursuant to a plea agreement with the City of San Diego, City Attorney's Office. (Superior Court Case No. M982775CF). The plea agreement signed by Mr. Pereyra states that the defendant shall "comply with all reasonable requests of the involved agencies (Regional Water Quality and State Water Resources Control Boards, Army Corps of Engineers, California Fish and Game, and City of San Diego Storm Water Pollution Prevention Division)."
10. Based on a site inspection by the Regional Board on January 8, 2008, the estimated volume of concrete slurry discharged to Chollas Creek for which Mr. Pereyra and/or Bulldog Concrete are responsible is roughly 2,500 cubic feet. Concrete slurry flowed over vegetation including native wetland habitat plants that grows within Chollas creek and its channel. Photographs taken by the Regional Board of the hardened concrete in Chollas Creek are provided in Attachment 1.
11. Discharges of concrete slurry in waters of the State cause violations of Water Quality Objectives and Basin Plan Prohibitions by causing deleterious bottom deposits, changes in pH, increase in turbidity and mineral concentrations, loss of habitat for benthic organisms which provide an important food source for fish, birds, and mammals; and impair normal ongoing creek functions such as infiltration, water recharge, and sediment transport.

¹ Pursuant to Water Code (WC) section 13243, the Basin Plan specifies that "the discharge of waste to inland surface waters, except in cases where the discharge complies with applicable receiving water quality objectives, is prohibited.

² WC section 13260 (a) (1) states that: Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system...shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board.

12. Any person that violates California Water Code Sections 13260(a) is guilty of a misdemeanor and may subject the dischargers to civil liability in accordance with Section 13261³ and 13265⁴ of the Water Code.
13. Cleanup of the unauthorized discharges of concrete slurry waste into Chollas Creek from Bulldog Concrete Pumping is necessary to abate the conditions of pollution and the ongoing threat to water quality impacts.
14. Pursuant to WC section 13304, the Regional Board is entitled to, and may seek reimbursement for, all reasonable costs it actually incurs to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.
15. In accordance with WC section 13267 (b), these findings provide the Dischargers with a written explanation with regard to the need for remedial action and identify the evidence that supports the requirement to implement cleanup and abatement activities and submit follow-up reports.
16. This enforcement action is being taken for the protection of the environment and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 2100 Et seq.) in accordance with Section 15321 (Enforcement Actions by Regulatory Agencies), Chapter 3, Title 14 of the California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to Section 13225, 13267, and 13383 of Division 7 of the Water Code, Oscar Pereyra, and Linda Pereyra individually and d.b.a. Bulldog Concrete Pumping, shall do the following:

1. By **October 17, 2008** submit a draft Creek Restoration and Monitoring Plan (Plan), including any necessary permits, prepared by a qualified professional with at least five years professional experience in stream restoration work. The Plan shall address the actions that will be taken to restore Chollas Creek to its pre-discharge state and comply with the Directives of this order. The Plan will be provided to the Regional Board prior to implementation. A final Plan shall be submitted by **November 21, 2008**.
2. By **January 7, 2009** cleanup and abate existing and threatened pollution associated with the unauthorized discharge of waste into Chollas Creek by:

³ WC section 13261 (a) states that: Any person failing to furnish a report under 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly...

⁴ WC section 13265 (a) states that: Any person discharging waste in violation of WC 13264, after such violations has been called to his attention in writing by the regional board, is guilty of a misdemeanor and may be liable civilly... Each day of such discharge shall constitute a separate offense.

- a. Removing of 2,500 or more cubic yards of solidified concrete slurry from Chollas Creek bed and bank;
 - b. Including management measures for erosion control to prevent further conditions that threaten beneficial uses of Chollas Creek; and
 - c. Re-vegetating the restored creek with native vegetation along the banks in a manner to mimic the diversity and distribution of vegetation in Chollas Creek in the vicinity of the affected area.
3. All waste material including concrete that is removed from the site shall be disposed of properly at facilities permitted to accept such waste in accordance with all relevant federal, state, and local laws, regulations, orders, resolutions, and ordinances. All work conducted in and around Chollas Creek shall comply with all applicable state and federal laws and regulations.
 4. The Plan shall include bioassessment monitoring using benthic macroinvertebrates to provide information about the biological integrity of Chollas Creek after removal of concrete. Bioassessment shall include: 1) the collection, analysis and reporting of benthic macroinvertebrate data and 2) the collection and reporting of specified physical habitat and chemical data (pH, dissolved oxygen, specific conductance, alkalinity, water temperature). Data collection shall follow the *Standard Operating Procedures for Collecting Benthic Macroinvertebrate Samples and Associated Physical and Chemical Data for Ambient Bioassessments in California* protocol, published in February 2007.

In order to assess if habitat impacted by concrete has been fully restored, the Plan shall include measurements to be taken at two stations: a soft-bottom control site downstream of the restored area, and one at the restored area. At least 2 measurements shall be taken at each of the two stations (for a total of 4 measurements). A pair of measurements should be taken on or around **April 1, 2009**, and on or around **October 1, 2009**. This data shall be used to assess the stream's recovery following the removal of concrete.

Reporting Requirements

5. By **January 31, 2009**, submit a draft Cleanup and Abatement Progress Report that documents that the required on-site cleanup and abatement actions have been taken and that Chollas Creek streambed within and downstream of the remediation area resembles pre-discharge conditions. The Cleanup and Abatement Progress Report shall include an estimation of the volume and aerial extent of the discharge and photographs of the remedial activities and completed cleanup conditions.
6. By **October 15, 2009**, the Dischargers shall submit a draft Monitoring Report to include the results of bioassessment monitoring conducted in April and October, 2009.

7. By **November 12, 2009**, submit a Final Chollas Creek Restoration Report that includes comprehensive information from the draft Cleanup and Abatement Progress Report and the draft Monitoring Report, to incorporate any comments received by the Regional Board on either of these two interim reports.
8. **Signatory Requirements.** All reports required under this Cleanup and Abatement Order shall be signed and certified by the Dischargers or by a duly authorized representative of the Dischargers and submitted to the Regional Board. *Duly Authorized Representative.* A person is a duly authorized representative only if: 1) The authorization is made in writing by the Discharger; and 2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity (A duly authorized representative may thus be either a named individual or any individual occupying a named position).
9. **Certification.** Include the following signed certification with all reports submitted pursuant to this Order:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

10. **Electronic and Paper Media Reporting Requirements.** The Dischargers shall submit both electronic and paper copies of all workplans, technical reports, and monitoring reports required under this Cleanup and Abatement Order. Electronic submission shall be in PDF format, and include the signed transmittal letter and professional certification.
11. **Report Submittals.** All monitoring and technical reports required under this Cleanup and Abatement Order shall be submitted to:

Michael P. McCann
Assistant Executive Officer
Attn: Southern Watershed Unit
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

NOTIFICATIONS

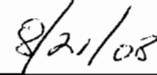
12. **Enforceability.** The Regional Board reserves its right to take any enforcement action authorized by law for violations of the terms and conditions of this Cleanup and Abatement Order.
13. **Applicability.** Requirements established pursuant to Water Code sections 13304 and 13267(b) are enforceable when signed by the Executive Officer of the Regional Board.
14. **Potential Liability.** Pursuant to Water Code section 13350, any person who intentionally or negligently violates a cleanup and abatement order may be liable civilly in an amount which shall not exceed five thousand dollars (\$5,000), but shall not be less than five hundred dollars (\$500), for each day in which the cleanup and abatement order is violated.

Pursuant to Water Code section 13268, any person failing or refusing to furnish technical or monitoring program reports as required by section 13267, or falsifying any information provided therein, is guilty of a misdemeanor, and may be liable civilly in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
15. **Cost Reimbursement.** The Dischargers shall reimburse the State of California for all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Cleanup and Abatement Order, according to billing statements prepared from time to time by the Regional Board or the California State Water Resources Control Board.
16. **Waste Management.** The Dischargers shall properly manage, store, treat, and dispose of contaminated soils and ground water in accordance with applicable federal, state, and local laws and regulations. The storage, handling, treatment, or disposal of soil containing waste constituents and polluted groundwater shall not create conditions of pollution, contamination or nuisance as defined in Water Code section 13050(m). The Discharger shall obtain, or apply for coverage under waste discharge requirements, or a conditional waiver of waste discharge requirements for any discharge of the waste to (a) land for treatment, storage, or disposal or (b) waters of the state.
17. **Duty to Use Qualified Professionals.** The Dischargers shall provide documentation that plans and reports required under this Cleanup and Abatement Order are prepared under the direction of appropriately qualified professionals. Business and Professions Code sections 6735, 7835 and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of registered professionals. The Dischargers shall include a statement of

Mr. & Mrs. Pereyra

Bulldog Concrete Pumping

qualifications and registration numbers, if applicable, of the responsible lead professionals in all plans and reports required under this Cleanup and Abatement Order. The lead professional shall sign and affix their registration stamp, as applicable, to the report, plan, or document.



MICHAEL P. MCCANN

Assistant Executive Officer

Attachment No. 1: Photographs of Site Conditions on January 8, 2008

ATTACHMENT NO. 1 to CAO NO. R9-2008-0036

SITE CONDITIONS ON JANUARY 8, 2008



PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.

CERTIFIED MAIL™



7007 1490 0003 8753 5209
7007 1490 0003 8753 5209

U.S. Postal Service TM
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 7.16
Certified Fee	2.65
Return Receipt Fee (Endorsement Required)	2.15
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$5.50

Postmark
Here

Sent To
Mr. and Mrs. Oscar Molina Perera
Street, Apt. No.,
or PO Box No. **249 South 33rd St.**
City, State, ZIP+4
San Diego, CA

PS Form 3800, August 2006

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Bulldog Concrete Pumping
Mr. and Mrs. Oscar Molina
249 South 33rd Street
San Diego, CA 92113

2. Article Number
(Transfer from service label)

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

7007 1490 0003 8753 5209

Domestic Return Receipt

102595-02-M-1540

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Track & Confirm

Search Results

Label/Receipt Number: **7007 1490 0003 8753 5209**Status: **Delivered**

Your item was delivered at 10:20 am on August 23, 2008 in SAN DIEGO, CA 92113. A proof of delivery record may be available through your local Post Office for a fee.

Additional information for this item is stored in files offline.

Track & Confirm

Enter Label/Receipt Number.

[Go >](#)[Restore Offline Details >](#)[Return to USPS.com Home >](#)[Site Map](#)[Customer Service](#)[Forms](#)[Gov't Services](#)[Careers](#)[Privacy Policy](#)[Terms of Use](#)[Business Customer Gateway](#)

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No FEAR Act EEO Data

FOIA

Headquarters
Washington, DCInspector General
Washington, DC



City of San Diego
Storm Water Pollution Prevention Program
1970 B Street, MS 27A
San Diego, CA 92102

Page 1 of 1
Date Issued: 12/20/04
NOV #: SW 4896

NOTICE OF VIOLATION

Exhibit 2

DATE OF VIOLATION <u>MONDAY DECEMBER 20, 2004</u>		TIME A.M./P.M. <u>11:40</u>	DAY OF WEEK <u>MONDAY</u>	
LOCATION OF VIOLATION (ADDRESS) <u>2836 WEBSTER AVENUE</u>				
BUSINESS NAME <u>BULLDOG CONCRETE PUMPING</u>		BUSINESS LICENSE #		
NAME: LAST	FIRST	MIDDLE	TITLE	
MAILING ADDRESS <u>249 S. 33rd Street</u>		CITY/STATE <u>San Diego, CA</u>	ZIP <u>92101</u>	
IDENTIFICATION/DRIVER'S LICENSE		I.O.B.		

SAN DIEGO MUNICIPAL CODE SECTION VIOLATED AND DESCRIPTION

- ☒ 43.0304 Prohibited Discharges ☐ 43.0307 Reduction of Pollutants in Storm Water
☐ 43.0306 Illegal Connections Prohibited

DESCRIPTION OF VIOLATION

OBSERVED WASTEWATER MIXED WITH CEMENT MATERIAL IN GUTTER
WORKERS FROM BULLDOG CONCRETE PUMPING WORKING AT 2836
WEBSTER AVENUE. NO BEST MANAGEMENT PRACTICES IN PLACE TO
CONTAIN, NO MEASURES TAKEN TO CLEAN UNTIL INSTRUCTED

CORRECTIONS REQUIRED:

- (1) IMMEDIATELY CLEAN CEMENT-LADEN WASTE WATER FROM
GUTTER (2) IMMEDIATELY STOP DISCHARGE OF CEMENT-LADEN
WASTE WATER (3) IMPLEMENT PROCEDURES TO ADDRESS BEST
MANAGEMENT PROCEDURES AND CLEAN PROCEDURES (4) TRAIN EMPLOYEES

Corrections indicated above are required immediately. These violations may be subject to further legal and/or administrative action.

OFFICER SIGNATURE

TITLE/ID #

CODE COMPLIANCE OFFICER

OFFICER NAME

TELEPHONE

Antonius A. Evans
(619) 525-8683

RECIPIENT SIGNATURE

PRINT NAME

DATE

REFUSED TO SIGN

This information is available in alternative formats upon request.



City of San Diego
Storm Water Pollution Prevention Program
1970 B Street, MS 27A
San Diego, CA 92102

Page 1 of 1
Date Issued: 12/29/04
NOV #: **SW** 4864

NOTICE OF VIOLATION

Exhibit 3

DATE OF VIOLATION <u>12/22/04</u>		TIME A.M./P.M. <u>1240</u>	DAY OF WEEK <u>WEDNESDAY</u>	
LOCATION OF VIOLATION (ADDRESS) <u>2836 WEBSTER AV. 92113</u>				
BUSINESS NAME <u>BULLDOG CONCRETE Pumping</u>		BUSINESS LICENSE # <u>1999004526</u>		
NAME: LAST <u>PEREYRA</u>	FIRST <u>OSCAR</u>	MIDDLE <u>M</u>	TITLE <u>OWNER</u>	
MAILING ADDRESS <u>249 S. 33rd ST</u>		CITY/STATE <u>SAN Diego CA</u>		ZIP <u>92113-1526</u>
IDENTIFICATION/DRIVER'S LICENSE <u>Callic A5397772</u>		D.O.B. <u>6/23/72</u>		

SAN DIEGO MUNICIPAL CODE SECTION VIOLATED AND DESCRIPTION

- ☒ 43.0304 Prohibited Discharges ☐ 43.0307 Reduction of Pollutants in Storm Water
☐ 43.0306 Illegal Connections Prohibited

DESCRIPTION OF VIOLATION

ON 12/22/04 OBSERVED DRIED POWDER CEMENT (CONSTRUCTION) LIKE SUBSTANCE IN CURBSIDE TRAVELED 225 FEET ALONG CURBSIDE + ENTERED STORM DRAIN INLET. FAILED TO COMPLY WITH CORRECTION REQUIRED ON PREVIOUSLY ISSUED NOV# 4896 ON DECEMBER 20, 2004 CEMENT WASTE IN CURBSIDE + STREET

CORRECTIONS REQUIRED:

IMMEDIATELY CLEAN BY SWEEP METHODS ALL CONSTRUCTION CEMENT WASTE IN CURBSIDE + STREET FOR 225 FEET TO STORM DRAIN INLET. IMMEDIATELY CEASE ALL NONSTORM WATER POLLUTANT DISCHARGES IN CONVEYANCE (CURB, STREET, ALLEY ETC) DO NOT HOSE DOWN UNLESS RECAPTURE METHODS ARE IN PLACE

Corrections indicated above are required immediately. These violations may be subject to further legal and/or administrative action. EDUCATE SELF ON MC 43.03 + FACT SHEETS

OFFICER SIGNATURE <u>Cory Patterson</u>	OFFICER NAME <u>CORRY PATTERSON</u>
TITLE/ID # <u>704</u>	TELEPHONE <u>619-525-8680</u>
CODE COMPLIANCE OFFICER	

RECIPIENT SIGNATURE

PRINT NAME

DATE

MAILED 12/23/04

This information is available in alternative formats upon request.

Step 1: Potential Harm Factor = n/a for non-discharge violations

Step 2: Assessments for Discharge Violations = n/a for non-discharge violations

Step 3: Per Day Assessments for Non-Discharge Violations					
Violations	Per Day Factor				Statutory Maximum Per Day [sec. 13350]
	Potential for Harm [minor, moderate, major]	Deviation from Requirement [minor, moderate, major]	Total Per Day Factor	Days of Violation	
Failure to cleanup concrete and restore creek	major	major	1	622	\$5,000

Initial Liability From Steps 1 - 3
(1) x (622) x (\$5,000) = \$3,110,000

Step 4: Adjustments					
Violations	Culpability [0.5 - 1.5]	Cleanup and Cooperation [0.75 - 1.5]	History of Violations	Multiple Violations (Same Incident)	Adjusted Days of Violation
Failure to cleanup concrete and restore creek	1.5	1.5	1.1	n/a	26

Step 5: Total Base Liability Amount
(Per day Factor x statutory maximum) x (Step 4 Adjustments)
(1) x (\$5,000) x (1.5) x (1.5) x (1.1) x (26) = \$321,750

Step 8: Economic Benefit
\$58,470

Step 6: Ability to Pay/Continue in Business
[Yes, No, Partly, Unknown]
unknown

Step 9

Minimum Liability Amount	Maximum Liability Amount
\$62,200	\$3,110,000

Step 7: Other Factors as Justice May Require

Costs of Investigation and Enforcement	Other
\$7,341	n/a

Step 10: Final Liability Amount
(total base liability) + (other factors)
(\$321,750) + (\$7,341) = \$329,091